

REMARKS

Claims 1-29 and 55-88 are withdrawn. Claims 30-54 remain pending. Claims 30 and 42 are amended herein. No new matter has been added.

Claim Rejections - 35 U.S.C. §112

Claims 30-54

The present Office Action states that Claims 30-54 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the present Office Action states, “[t]he independent claims recite controlling a data output path by diverting a commonly used data pathway to a controlled data pathway. The term “common” is unclear, and therefore indefinite.”

Applicants have amended Claims 30 and 54 herein to remove the term “common”.

For this reason, Applicants respectfully submit that the rejection of Claims 30-54 under 35 U.S.C. § 112, second paragraph, is moot.

Claim Rejections - 35 U.S.C. §103(a)

Claims 30-31, 33-37, 39-43, 45-50, 52 and 54

The present office action states that Claims 30-31, 33-37, 39-43, 45-50, 52 and 54 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuriya et al. (20010056404) hereinafter “Kuriya”, in view of Leoutsarakos (20040039905) hereinafter “Leo” and further in view of Peinado et al. (20020007456) hereinafter “Peinado”. Applicants have reviewed the cited reference and respectfully submit that the embodiments of the present invention as recited in Claims 30-31, 33-37, 39-43, 45-50, 52 and 54 are not taught or rendered obvious by Kuriya either alone or in combination with Leo and further in view of Peinado for the following reasons.

Currently amended Independent Claim 30 (and similarly Claim 42) includes the features, “A method for preventing unauthorized recording of media content, said method comprising:
transmitting from a client node to an administrative node a request for delivery of an instance of media content;
determining which content source of a plurality of content sources to provide delivery of said instance of media content, provided said client node is authorized to receive said instance of media content;
transmitting to said client node an access key and a location of said instance of media content of said content source;
transmitting from said client node to said content source a second request and said access key;
in response to receiving said second request and said access key, transferring said instance of media content from said content source to said client node, said instance of media content being transferred in an unencrypted format;
activating a compliance mechanism for enforcing compliance with a usage restriction applicable to said instance of media content in response to said client node receiving said instance of media content in said unencrypted format;
controlling a data path of a kernel-mode media device driver of said client node with said compliance mechanism by diverting a commonly used first data pathway used by said media content present application to a second data pathway governed by said compliance mechanism; and
directing said media content in said unencrypted format from said kernel-mode media device driver to a media device driver coupled with said compliance mechanism, via said data path, for selectively restricting output of said media content” (emphasis added).

Support for the Claimed feature can be found throughout the Figures and Specification including, but not limited to, Figures 3 and 5A-5C, page 21 lines 14-22, page 23 lines 18-35 and the last paragraph of the description of Figure 3 in the Specification.

Applicants have reviewed Kuriya and do not understand Kuriya to teach transferring said instance of media content from said content source to said client node, said instance of media content being transferred in an unencrypted format” (emphasis added).

In contrast, Applicants understand Kuriya to teach (at least at column 13 paragraph [0203] “[T]he content (compressed and encrypted in predetermined algorithms).”

Further, Applicants have reviewed Kuriya and do not understand Kuriya to teach a usage compliance mechanism controlling a data path of a kernel-mode media device driver of said

client node with said compliance mechanism by diverting a commonly used first data pathway used by said media content present application to a second data pathway governed by said compliance mechanism (emphasis added).

Moreover, Applicants agree with the present Office Action statements on page 5 that Kuriya does not explicitly teach “determining which content sources of a plurality of content sources to provide delivery of said instance of media content, provided said client node is authorized to receive said instance of media content.”

For these reasons, Applicants respectfully submit that Claims 30 and 42 are not taught or rendered obvious by Kuriya under 35 U.S.C. §103(a).

With respect to the Leo reference, Applicants respectfully submit that the Leo reference is not analogous art. Further, Applicants do not understand the teachings of Leo to provide any type of usage restriction for an instance of media content.

In contrast, Applicants understand Leo to teach and render obvious “sharing data between a server and a plurality of clients” (emphasis added). As such, Applicants understand Leo to control client access and authentication in a network, as opposed to controlling the usage of each instance of media content (emphasis added).

For these reason, Applicants respectfully submit that Claims 30 and 42 are not taught or rendered obvious by Kuriya in view of Leo under 35 U.S.C. §103(a).

Applicants have additionally reviewed Peinado and do not understand Peinado to teach or render obvious the feature, “transferring said instance of media content from said content source to said client node, said instance of media content being transferred in an unencrypted format” (emphasis added).

Moreover, Applicants respectfully submit that Peinado does not teach or render obvious the feature of “a usage compliance mechanism controlling a data output path by **diverting a first data pathway** used by a media content provider application to **a second data pathway** governed by said compliance mechanism” as Claimed in Claims 30 and 42.

In contrast, Applicants understand Peinado to teach a device that determines and then authenticates the modules in the commonly used data pathway of a rendering Application (see Col. 33-34). In other words, Applicants do not understand Peinado to teach the diverting of data from an application’s commonly used data path, but instead, Applicants understand Peinado to determine the commonly used data path of the application and then authenticate the modules within the commonly used data path (emphasis added).

Additionally, Applicants understand Peinado to teach a number of methods for authenticating the modules once they are determined. Thus, Peinado cannot be understood to be teaching the diversion to a controlled data pathway, as there would be no reason to determine the data path and authenticate the modules associated therewith, as that information would be known.

As such, Applicants respectfully submit that Peinado teaches directly away from the feature of “usage compliance mechanism controlling a data output path by **diverting a first data pathway** used by a media content provider application to **a second data pathway** governed by said compliance mechanism” as Claimed in Claims 30 and 42.

Moreover, Applicants understand Peinado to teach scrambling content when it is to be output in naked form along the pathway.

As such, Applicants respectfully point out that Peinado teaches away from “directing said media content in said unencrypted format from said kernel-mode media device driver to a media device driver coupled with said compliance mechanism, via said data path, for selectively restricting output of said media content” ((emphasis added).

As such, Applicants respectfully submit that Claims 30 and 42 are not taught or rendered obvious by Peinado. Furthermore, Applicants respectfully state that based on the above reasoning, neither Kuriya alone nor in combination with Leo and Peinado teaches or renders obvious the features of Claims 30 and 42. As such, Applicants respectfully submit that Claims 30 and 42 are not taught or rendered obvious by Kuriya in view of Leo and further in view of Peinado under 35 U.S.C. §103(a).

Regarding Claim 31, on the second paragraph of page 8, the present Office Action states, “[P]icking a content server close to the client unit would be obvious, as it teaches in paragraph 70 that someone skilled in the art will appreciate that better service can be provided if a connection is close rather than far.”

Applicants respectfully disagree with the well-known assertion. Specifically, Applicants point out that the “assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support” (MPEP 2144.03(A); *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)). In particular, “[i]f such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge” (MPEP 2144.03(B); see *In re Soli*, 317 F.2d 941, 946, 37 USPQ 797, 801 (CCPA 1963); see also *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943)).

As such, Applicants again respectfully request that the Office Action provide support in the form of evidence that “closer is better” or withdraw the rejection of record.

With respect to Claims 31, 33-37, 39-41, 43, 45-50, 52 and 54, Applicants respectfully state that Claims 31, 33-37, 39-41, 43, 45-50, 52 and 54 depend from the allowable Independent Claims 30 and 42 and recite further features of the present claimed invention. Therefore, Applicants respectfully state that Claims 31, 33-37, 39-41, 43, 45-50, 52 and 54 are also allowable as pending from allowable base Claims.

Claims 32 and 44

The present office action states that Claims 32 and 44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuriya in view of Leo in view of Peinado and further in view of Ferguson (2002/0065849). Applicants have reviewed the cited reference and respectfully submit that the embodiments of the present invention as recited in Claims 32 and 44 are not taught or rendered obvious by Kuriya either alone or in combination with Leo and Peinado and further in view of Ferguson for the following reasons.

Applicants respectfully state that Claims 32 and 44 depend from the allowable Independent Claims 30 and 42 and recite further features of the present claimed invention. Therefore, Applicants respectfully state that Claims 32 and 44 are also allowable as pending from allowable base Claims.

Claims 32(38) and 51

The present office action states that Claims 32 and 51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuriya in view of Leo in view of Peinado and further in view of Radinsky (5,668,996). Applicants have reviewed the rejection and have understood the body of the rejection to address Claim 38 and not Claim 31. As such, Applicants have addressed the Claim rejection in the body and assumed the Claim 32 reference to be a clerical error.

Applicants have reviewed the cited reference and respectfully submit that the embodiments of the present invention as recited in Claims 38 and 51 are not taught or rendered obvious by Kuriya either alone or in combination with Leo, Peinado and further in view of Radinsky for the following reasons.

Applicants respectfully state that Claims 38 and 51 depend from the allowable Independent Claims 30 and 42 and recite further features of the present claimed invention. Therefore, Applicants respectfully state that Claims 38 and 51 are also allowable as pending from allowable base Claims.

Claim 53

The present office action states that Claim 53 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuriya in view of Leo in view of Peinado and further in view of McGillis (7,032,228). Applicants have reviewed the cited reference and respectfully submit that the embodiments of the present invention as recited in Claim 53 is not taught or rendered obvious by Kuriya either alone or in combination with Leo, Peinado and further in view of McGillis for the following reasons.

Applicants respectfully state that Claim 53 depends from the allowable Independent Claim 42 and recites further features of the present claimed invention. Therefore, Applicants respectfully state that Claim 53 is also allowable as pending from an allowable base Claim.

Conclusion

In light of the above-listed remarks, Applicant respectfully requests allowance of Claims 30-54.

The Examiner is urged to contact Applicant's undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

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